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May 16, 2006

AGENDA ITEM 7-D

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. SUBJECT:** Assembly Bill 2945 (Spitzer) – As Amended
April 6, 2006
- Safety Member status for specified Department of Justice employees
- Sponsor: Office of the Attorney General*
- II. PROGRAM:** Legislation
- III. RECOMMENDATION:** Neutral
- This bill would reclassify a group of state miscellaneous employees to state safety membership.

IV. ANALYSIS:

Assembly Bill 2945 would reclassify to safety membership state employees who are managers, supervisors, or confidential employees in a forensic program or whose subordinate is or becomes a safety member.

Background

When the State Employees' Retirement System (SERS) was established in 1932, all members had the same retirement benefits. In 1935, an enhanced retirement formula and special industrial death and disability benefits were created for the first state "safety" class of employment, the California State Highway Patrol. In 1947 a second safety class was established for firefighters and fish and game wardens. In following years, other employee groups received safety status, among them, harbor police, state college police, and Department of Corrections officers. In part, as a result of increasing numbers of employee groups attempting to legislatively achieve safety status, in 1974 the State Personnel Board (SPB) was required by legislative mandate to establish criteria for state safety membership and to determine which classes in the civil service met any or all of the criteria. As a result, legislation was enacted over the next several years to give safety status to employee groups meeting the SPB's criteria.

The State Employer-Employee Relations Act of 1977 established collective bargaining for state employees, and in 1981 the Department of Personnel Administration (DPA) was established to represent the Governor in collective bargaining. As a result of collective bargaining, the Peace Officers/Firefighters (PO/FF) state safety class was created in 1984 for employees in state Bargaining Units 6 (correctional peace officers), 7 (protective services and public safety officers), and 8 (firefighters). At this time, the state has three categories for safety employment and retirement benefits:

- The state “Patrol Member” class for members of the California Highway Patrol (receives the 3 percent at age 50 retirement formula);
- The “Peace Officer/Firefighter” class for officers and firefighters in bargaining units 6, 7, and 8 and some officers identified as peace officers in the Penal Code (receives the 3 percent at age 50 retirement formula or 3 percent at age 55 retirement formula for Bargaining Unit 8 managers/supervisors); and
- The “State Safety” class for employees of the California Department of Corrections (CDC), the California Youth Authority (CYA), and the Department of Mental Health who have custodial and public protection duties at the state’s correctional facilities and forensic hospitals, but who are not correctional peace officers (receives the 2.5 percent at age 55 retirement formula).

Prior to 1998, the SPB determined which employee groups met criteria for safety membership. When SPB approved safety membership for an employee group, legislation was introduced and the group attained safety membership after the legislation was enacted. SPB applied two main factors to determine the application of safety status to employee groups: (1) “public protection¹” and (2) “physical capacity.²”

However, a study conducted by DPA in 1996 found that the physical capacity criterion was not always applied in hiring and retaining employees in some of the safety classes. In addition, the application/approval/ legislative process was lengthy and cumbersome, often taking two to three years. In 1999, legislation placed new “state safety” member criteria into statute and gave DPA the authority to approve “state safety” membership without the enactment of accompanying legislation. Currently, DPA is empowered to review and approve applications from miscellaneous employee groups for inclusion in the “state safety” classification.

¹ The normal scope of duties includes substantial responsibility for protecting people from physical violence or danger and the responsibility of safeguarding the public and private property. The public protective role requires that employees serve in positions where response in emergency situations involving human life is a regular part of their job functions. At any time these employees may be directed to place themselves into extremely hazardous situations in order to assure the protection of the public.

² Conditions of employment require that employees maintain the physical capacity necessary to provide a required level of service to the public such that the safety of the public is not jeopardized when retirement is not permitted at ages earlier than presently afforded to non-safety occupational groups.

DPA is required by law to apply the criteria in Government Code section 19816.20 for determining state safety membership. The criteria for membership in the “state safety” class now require all of the following:

- The protection and safeguarding of the public and property;
- The control and supervision of inmates, youthful offenders, and state mental facility Penal Code offenders; and
- The capability to respond in emergency situations and to provide a level of service to the public such that the safety of the public and of property is not jeopardized, as part of the conditions of employment.

Employee groups who do not wish to go through the established procedure for being reclassified from miscellaneous members to the PO/FF or state safety classes must, alternatively, pursue legislation to allow them to become state safety or PO/FF members.

In 2002, SB 183 ratified an agreement reached with Bargaining Unit 7 that reclassified 3,800 state miscellaneous members to safety. This group included fingerprint analysts, questioned document examiners, and criminalists.

Proposed Changes

This bill would reclassify the following employee classifications to state safety membership: Assistant Bureau Chief in the Division of Law Enforcement, Criminalist Manager, Criminalist Supervisor, Latent Print Supervisor, Questioned Document Supervisor. These classifications must supervise subordinates who are, or have become, state safety members. As state safety they would no longer participate in Social Security and would receive increased retirement benefits of 2.5 percent at age 55 and become eligible for industrial disability benefits.

Legislative History

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| 2002 | Chapter 56 (SB 183, Burton) – Ratified an agreement that was reached between Bargaining Unit 7 and DPA, which agreement had not been included in a Memorandum of Understanding (MOU). <i>CalPERS Position: Neutral</i> |
| 2001 | AB 658 (Havice) – Reclassifies Department of Motor Vehicles employees designated as Licensing Registration Examiners to the state safety member classification. Died in committee. <i>CalPERS Position: None</i> |
| 2000 | AB 2458 (Wesson) - Was similar to AB 1596 (1998). Vetoed by the Governor because “Employees in the seven classifications included in this bill [did] not meet the state’s criteria of inclusion in the state safety retirement category.” <i>CalPERS Position: Neutral</i> |

- 1998 AB 1596 (APER&SS) - Would have added specific positions within the Department of Justice to the state safety member category. Vetoed because the provisions had not been collectively bargained. *CalPERS Position: Neutral*
- AB 321 (Bordonaro) - Would have reclassified specific employees of the Department of Mental Health as state safety members. Vetoed because the provisions had not been collectively bargained. *CalPERS Position: Neutral*
- 1997 AB 629 (Strom-Martin) - Would have reclassified local child welfare workers from local miscellaneous to local safety. Vetoed by the Governor. *CalPERS Position: Neutral*
- 1991 Chapter 623 (AB 986, Lancaster) - Added numerous class titles to the definition of state safety member in the PERL to enable the Department of Corrections and the Prison Industry Authority to reclassify eligible members from state industrial to state safety membership. *CalPERS Position: Neutral*
- AB 1582 (Hannigan) - Similar to AB 986 above. Died in committee. *CalPERS Position: Oppose, Unless Amended*
- 1989 Chapter 962 (SB 1539, Dills) - Reclassified to state safety specified classes within the Department of Mental Health, Forestry, and Fire Protection. *CalPERS Position: Neutral*

Issues

1. Arguments by Those in Support

The author of this bill indicates that an urgent problem is threatening to cripple the state's ability to recruit forensic program supervisors and managers who oversee crucial forensic work, including the analysis and coding of new criminal offender DNA samples as required under the law. These supervisory positions provide the direction and quality control necessary to maintain Department of Justice (DOJ) laboratory certification. The author also argues that by not extending the same safety retirement benefits to supervisors and managers that are provided to their subordinates will be devastating to their recruitment and retention.

Organization in Support: California Union of Safety Employees (CAUSE)

2. Arguments by Those in Opposition

There is currently no known opposition.

3. This bill would expand safety membership to a non-traditional safety group.

Much of the safety reclassification legislation proposed is designed to provide safety status for employees who do not fit the traditional criteria for safety inclusion. Traditionally, the safety classification has been reserved for those involved in the “active protection,” as defined by the Attorney General, of the public and property. Enhanced benefits for the safety classifications indicate the public’s recognition of the life threatening risks taken on our behalf by active law enforcement personnel.

The justification for this legislation is that granting safety membership to forensic supervisors and managers is necessary for the Department of Justices to recruit and retain qualified employees and because the supervisors and managers perform the same duties as their subordinates who are classified as safety members.

If the standard for safety membership continues to expand, we could expect to include more employee groups in the safety classifications.

4. Legislative Policy Standards

The Board’s Legislative Policy Standards suggest a neutral position on proposals to reclassify miscellaneous members to safety membership, whether mandated or optional.

V. STRATEGIC PLAN:

This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

AB 2945 would bring a manager, supervisor, or confidential employee in a forensic program into the state safety class. These forensic employees would thereafter be excluded from contributing to Social Security and would receive the enhanced retirement formula and industrial disability benefits currently available to other members in the state safety class.

Program Costs

Complete data on the affected group is not currently available to properly estimate the cost impact of AB 2945. There will be an increase in contributions for both the employer and employee as a result of moving from state miscellaneous to state safety. These costs may be offset somewhat by removing these employees from Social Security inclusion; however, in computing employer rates, CalPERS does not consider the effect of Social Security inclusion or exclusion.

Administrative Costs

Administrative costs are expected to be minimal and absorbable.

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